

In re) Fair Hearing No. 11,693
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare placing her ANFC grant on certified vendor payment status. The issue is whether the petitioner mismanaged her money so as to jeopardize the health and/or welfare of her children.

The petitioner lives with her two children in a Section 8 subsidized apartment. The children's ages are 16 and 19. Both are high school students. The petitioner and both children have part-time jobs.

The petitioner, who is the appellant in Fair Hearing No. 11,633 (also pending before the board at this time) has had ongoing problems with her landlord since last summer. The Department's decision to place the petitioner on vendors stems from the subject of Fair Hearing No. 11,633--the petitioner's application in October, 1992, for general assistance (GA) to pay rent that was in arrears at that time. At that time, as well as in subsequent conversations, the petitioner's landlord told the petitioner's caseworker that while he had no immediate plans to evict the petitioner (this being the basis of the Department's decision--and the

hearings officer's recommendation--in Fair Hearing No. 11,633 denying the petitioner GA to pay her back rent) he "didn't know" how long he could continue the petitioner's tenancy if she continued not paying her rent. The landlord told the caseworker that he would definitely continue the petitioner's lease on a month-to-month basis if the Department would pay the petitioner's rent in vendor form.

The petitioner vehemently objects to having her rent payments vendored and to the Department's conclusions that she is incapable of handling her own finances and that her children's welfare is at all threatened by the situation. She admits that on several occasions she has been late in paying her rent, but states that presently she is only two months behind. She maintains that she only fell behind in rent during times when she needed money to meet other basic needs. To date, the petitioner's landlord has given her no notification that he intends to evict her. The petitioner states that she wants to move anyway, primarily because she does not get along with her neighbors, but that she intends to keep paying her rent and pay off her arrearage.

While the Department's actions in this matter appear to be motivated by a sincere desire to help the petitioner, the facts even as alleged by the Department do not remotely support involuntarily placing the petitioner on certified vendor payments. The Department states that it is concerned about the petitioner's ability to obtain affordable housing

if she is evicted and loses her Section 8 certificate. However, by the Department's own admission not only is the petitioner in no imminent danger of being evicted from her present apartment, but it is also not at all clear that the petitioner would in fact lose her Section 8 certificate if she were evicted. Moreover, other than the fact that her present landlord might not give her a favorable reference, there is no evidence that the petitioner, with or without a Section 8 certificate, couldn't find another place to live. Nor is there any evidence that the health or welfare of the petitioner's 16-and-19-year-old "children" would be jeopardized simply by being evicted from their present apartment. And finally, and perhaps most grievously, other than the fact that she has not always paid her rent on time, there is simply no evidence whatsoever that the petitioner has "mismanaged" her finances.

ORDER

The Department's decision is reversed.

REASONS

The regulations regarding "protective payments" of ANFC are reproduced below:

Under the above regulations the mere threat of an eviction--even in one did exist--does not establish per se that the health, safety, or welfare of petitioner's children is "jeopardized". Nor does non-payment of rent demonstrate

per se that the petitioner has "severely mismanaged" her finances. Low income people, like most everyone else, must constantly make economic choices with which others might disagree or find fault. The underlying theory of the ANFC program, however, is to promote and encourage dignity, independence, and self-reliance. See 33 V.S.A. §101.

Regardless of the questionable judgement that may sometimes be shown by recipients, the Department, despite its apparent good intentions, simply cannot use the above regulations in the selective and paternalistic manner that is evident here.¹ In light of the lack of evidence either that the health, safety, or welfare of the petitioner's children is in any way "jeopardized" or that the petitioner has "mismanaged" the household's finances, there is absolutely no basis under the above regulations to involuntarily place the household on vendor payments.²

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¹Indeed, in light of its position in F.H. No. 11,633 it seems that the Department (if not the petitioner) is trying to have it both ways in regard to the imminence and degree of harm it alleges is facing the petitioner and her children.

²It is arguable that whenever the Department has reason to believe that the health, safety, or welfare of children is in jeopardy it is required by law to report the situation to SRS. See 33 V.S.A. § 4913(a). Indeed, the Department may be exposing itself and its workers to serious liability by making such determinations without involving SRS.

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